

March 25, 2013

Commission's Secretary
Office of the Secretary
Federal Communications Commission (F.C.C.)
445 12th Street SW
Washington DC 20554

RE: Rates for Interstate Inmate Calling Services; WC Docket No. 12-375; FCC 12-375; Item 42 ("Disabilities Access")

Dear F.C.C. Officials:

NDRN is pleased to have the opportunity to comment on a Notice of Proposed Rulemaking (NPRM) regarding interstate phone services for prisoners. We wish to comment specifically on one aspect of the larger NPRM, Item 42 ("Disabilities Access").

Disabilities Access. There is evidence in the record to indicate that inmates with hearing disabilities may not have access to ICS [Inmate Calling Services] at reasonable rates using TTYs. The record suggests that because the average length of a telephone conversation using a TTY is approximately four times longer than a voice telephone conversation, deaf and hard of hearing inmates who use TTYs have to pay more than their hearing counterparts. The record also suggests that TTY users have had to pay additional fees for connecting to a TTY relay operator. We seek comment on the types of ICS access that individuals who are deaf or hard of hearing experience during their incarceration. Where such access to ICS is provided, are the rates the same as those available to those without a disability? If the rates differ, what is that difference and what are the explanations for such difference? We note that section 276(b)(1)(A) specifically exempts "telecommunications relay service calls for hearing disabled individuals" from the Commission-established "per call compensation plan" ensuring that ICS providers are "fairly compensated." How should the Commission take this exemption into account in examining rates?

The National Disability Rights Network ("NDRN") is the non-profit membership association of protection and advocacy ("P&A") agencies that are located in all 50 states, the District of Columbia, Puerto Rico, and the United States Territories. P&A agencies are authorized

under various federal statutes to provide legal representation and related advocacy services, and to investigate abuse and neglect of individuals with disabilities in a variety of settings. P&As are an “essential part of the federal disability rights enforcement scheme.”¹ The P&A system comprises the nation’s largest provider of legally-based advocacy services for persons with disabilities. NDRN supports its members through the provision of training and technical assistance, legal support, and legislative advocacy, and works to create a society in which people with disabilities are afforded equality of opportunity and are able to fully participate by exercising choice and self-determination. P&As represent individuals with disabilities in all institutional settings in which they may be found, including prisons, jails, and detention facilities, among others. As such, NDRN is uniquely situated to address the questions raised in Item 42 of this NPRM.

NDRN believes that improving access to and rates for use of TTYs by prisoners who are deaf /hard of hearing, while an important first step, is not the only change necessary to ensure equitable access for this group. Other communication methods are needed to provide equitable access to the entire population of prisoners who are deaf /hard of hearing.

American Sign Language , not English, is the primary language for many people who are Deaf. Many individuals in the U.S. who grow up without the ability to hear use American Sign Language (“ASL”) ⁱ which is not a manual form of English. ASL is its own language, with its own grammar and its own syntax. There is not a one-to-one correspondence between English words and signs in ASL. As a result, many Deaf people are not fluent in written English. There is variation among members of the Deaf community, but as a whole, it is not appropriate to depend upon written English as an effective means of communication for all Deaf people. For many, a TTY does not provide equitable access to the phone system.

Videophones are a better choice than TTYs for these prisoners. Deaf communities are rapidly adopting videophones as the primary alternative to TTYs and there are many available models of videophones and videophone applications. One of these is Video Relay Services (VRS) which allows Deaf videophone users to communicate with hearing people. It is free of charge to all telephone users, deaf or hearing. Videophones allow Deaf people to communicate in their native language, ASL. When two Deaf people talk over a videophone, the conversation takes no more time than an equivalent conversation between two hearing people would. When VRS is used, the call takes longer than the equivalent conversation between hearing people, because of the time necessary for interpretation.

Despite some adoption of videophone technology, most prison and jail facilities still limit Deaf prisoners to TTYs, which can be cumbersome for them to use. Most prison and jail facilities block access to toll-free numbers as a security measure and many do not have an exception for calling relay numbers. This block prevents Deaf prisoners from using relay,

¹ *Disability Advocates, Inc. and the United States v Paterson*, No. 10 - 325-cv (2d. Cir.)(U.S. Dept. of Justice amicus brief filed on Oct. 6, 2011).

and thus prevents their communicating with hearing friends and family, and even hearing attorneys and court personnel.

However, it is important not to eliminate TTYs altogether. People who become deaf later in life often prefer to use TTY, so they must remain available for this group of prisoners. Regardless, TTYs' limitations must be recognized and taken into account when developing prison policy.

Some facilities have TTYs available on the regular phones accessible to all prisoners. Other prisons and jails keep TTY equipment in a staff member's office or other generally inaccessible place. Many prisoners who are deaf /hard of hearing only get access to the TTY machine during working hours, during weekdays, and when staff members do not have other pressing duties. This results in prisoners who are deaf /hard of hearing being unable to reach friends and family who are out of the home during the work day. It also limits these prisoners' communication to many fewer possible hours than hearing prisoners', resulting in inequitable access.

In addition, for those who do use them, TTYS are very slow. Generally, an average rate for typing on a TTY is 33 – 40 words per minute (wpm). The TTY usually transmits tones at the rate of 45 characters per minute no matter how fast a person types. Hence, TTYs do not have high-speed transmission capability; and 300-400% more time is needed when using a TTY than when talking. Charges for TTY calls are not consistent. In some facilities, where TTYs are available on the general phones, prisoners who are deaf /hard of hearing are charged the same per minute charge as hearing prisoners, despite the fact that TTY calls take up to four times longer, resulting in what is in effect a surcharge for the TTY user. In other facilities, where TTYs are available on phones not connected to the general ICS, the administration charges an arbitrary fee.

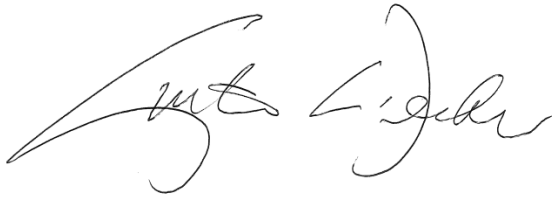
Recommendations

NDRN recommends that FCC mandate the following:

- A. All ICS should provide access to both videophones and TTYs for prisoners who are deaf /hard of hearing.
- B. Relay numbers should be accessible from all ICS.
- C. Time limits on telephone calls should be extended for prisoners who are deaf /hard of hearing using VRS or TTY, in a manner that allows for equitable access with prisoners without disabilities.
- D. The rates charged for VRS and TTY calls should be reduced to at least one half or one quarter, respectively, of the charges for voice calls.

If you have any questions about this document, please contact Diane Smith Howard, Staff Attorney at (202) 408-9514 ext. 118. Thank you for your consideration of our thoughts and recommendations.

Sincerely,

A handwritten signature in black ink, appearing to read "Curtis Decker". The signature is fluid and cursive, with the first name "Curtis" written in a larger, more prominent script than the last name "Decker".

Curtis Decker, Executive Director
National Disability Rights Network

ⁱ These individuals, who are often born deaf or lose their hearing before they acquire language, are sometimes referred to as Deaf, with a capital "D," to distinguish them from those deaf individuals who do not use ASL.